Supreme Court, U.S.
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No. 02-512

IN THE

Supreme Court of the United States

UNITED HOSPITAL CENTER *et al.*,

Petitioners,

v.

DANIEL GUIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of West Virginia

REPLY BRIEF OF PETITIONERS

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REPLY BRIEF OF PETITIONERS

In their opening brief, petitioners demonstrated that it violates a deeply rooted and fundamental principle of Anglo-American jurisprudence to permit a private plaintiff to maintain a class action against 68 private defendants despite his failure to allege that he has ever had any dealings with, or suffered any injury at the hands of, 67 of these defendants. Respondent offers no response to this showing. Indeed, he confirms the fundamental unfairness of such an action by urging the Court to ignore the plight of one petitioner on the grounds that its conduct is not similar to that of the only defendant with whom respondent actually dealt.

Unable to defend the propriety of this extraordinary action, respondent suggests that this Court lacks jurisdiction because the order on review is not final and rests on independent and adequate state law grounds. These claims are foreclosed by controlling authority. Because a Petition for a Writ of Prohibition is not an interlocutory appeal but a separate and original action in the West Virginia Supreme Court, the order disposing of that action is final and reviewable. And the state court's determination that respondent was entitled to maintain this action under state class action law was not an independent basis for the decision; instead, that state law ruling compelled the court to confront and decide petitioners' federal claim. Because petitioners squarely presented a due process challenge below, the order denying a writ of prohibition necessarily rests, in part, on the court's disposition of petitioners' federal law claim.

Respondent relies upon similar diversionary tactics in its arguments on the merits. Most notably, he mischaracterizes petitioners' due process claim as an attempt to mandate application of Article III to state courts. Petitioners, however, advocate no such principle. Indeed, they acknowledged that Article III does not apply to the state courts, which are free to

issue advisory opinions or adjudicate many types of claims that would not be justiciable in federal courts. Rather, petitioners seek recognition of the fundamental, and narrow, constitutional principle that a private defendant cannot be haled into court at the behest of a private plaintiff who alleges no injury caused by that defendant. None of the decisions of this Court that respondent cites even suggests, let alone holds, that state courts may entertain such suits.

Nor can respondent rebut petitioner's showing that, by dispensing with the "private injury" requirement, the state courts have caused the same fundamental unfairness that led to adoption of the "minimum contacts" test under the Due Process Clause. Respondent offers a lengthy recitation of the typicality and juridical links arguments that it advanced in the state courts. But none of these arguments demonstrates that petitioners had any reason to anticipate being sued by respondent, or that they were on notice that they should structure their primary conduct in order to protect themselves from such a suit. Indeed, respondent's opposition confirms that he has not alleged, and cannot allege, any "conspiracy" by petitioners, and that he seeks to predicate a suit against every health care provider in the state on nothing more than the existence of common practices among them.

1. Respondent's jurisdictional arguments are utterly baseless. A Petition for a Writ of Prohibition is not an interlocutory appeal from a lower court ruling, but a separate proceeding over which the West Virginia Supreme Court has original jurisdiction. W. Va. R. App. P. 14. Thus, when the West Virginia Supreme Court denied the Petition for a Writ of Prohibition, it rendered a final decision as to all issues raised in that proceeding, including petitioners' federal due process claim. The separate original proceeding before the West Virginia Supreme Court is therefore at an end, and that court's decision denying petitioners' due process claim is a "final judgment[]" from the "highest court" of West Virginia, as required by Section 1257(a). 28 U.S.C. § 1257(a).

The ongoing class action before the Circuit Court is separate and distinct from the now-concluded prohibition proceeding before the West Virginia Supreme Court, and does not affect the finality of the West Virginia Supreme Court's judgment. See *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 289-90 (1980); see also *Board of Educ.* v. *Superior Court*, 448 U.S. 1343, 1346 (1980) (Rehnquist, J., in chambers) ("[T]he Board's petition for a writ of mandamus and/or prohibition was a distinct lawsuit which was fully and finally determined by the California Supreme Court's judgment. . . ."); *Fisher* v. *District Court*, 424 U.S. 382, 385 n.7 (1976) (per curiam) ("A judgment that terminates original proceedings in a state appellate court, in which the only issue decided concerns the jurisdiction of a lower state court, is final, even if further proceedings are to be had in the lower court."). Indeed, *World-Wide Volkswagen* is directly on point. There, this Court reviewed the denial of a writ of prohibition by the Oklahoma Supreme Court in which the petitioner had argued that federal due process concerns prevented an Oklahoma court from exercising personal jurisdiction over the petitioners. This Court reviewed the denial of the writ of prohibition – a ruling in a proceeding separate from the proceeding before the trial court, see Okla. Sup. Ct. R. 1.191 (noting that petition for writ of prohibition may be filed under original jurisdiction of Oklahoma Supreme Court) – despite the fact that the proceeding before the Oklahoma trial court was ongoing. *World-Wide Volkswagen*, 444 U.S. at 289-90.[1]

Nor is it true that the West Virginia Supreme Court's decision rested on adequate and independent state grounds. As petitioners have explained, and respondent nowhere disputes, petitioners argued below that permitting a class

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[1] Accordingly, the fact that some of the petitioners filed a motion to decertify the class in the Circuit Court could not have affected the finality of the order under review. In all events, since the filing of respondent's opposition, the Circuit Court denied that motion.

action plaintiff to sue private parties that are not alleged to have caused the plaintiff any injury violates the federal Due Process Clause. See Pet. for Writ of Prohibition at 9-10, 15-16. The West Virginia Supreme Court's determination that this action satisfies state law class action standards – including state law standards for determining typicality, class standing, or "juridical links" – did not resolve petitioners' federal claim. Rather, that determination required the West Virginia Supreme Court to confront petitioners' claim that, even if state law permits a suit such as this one, federal due process forbids state courts from entertaining such a suit.[2]

In order to deny the Petition for Writ of Prohibition, therefore, the West Virginia Supreme Court necessarily had to reject petitioners' federal due process claim. The fact that the court did not explicitly state that it was doing so, or explain its reasoning, is irrelevant. See *Raley* v. *Ohio*, 360 U.S. 423, 436-37 (1959). Because the federal claim was fairly presented and necessarily decided, this Court has jurisdiction to review the state court's order. See *id.*

2. Respondent's substantive arguments fare no better. Contrary to respondent's claim, petitioners do not seek a ruling that Article III applies to state court proceedings. Br. at 14-16. In fact, petitioners expressly acknowledged that state courts can and do entertain a variety of claims that would not be justiciable under Article III. See Pet. at 14-15. Rather, what petitioners seek is a ruling that state courts violate due process by allowing a private defendant to be

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[2] For these same reasons, respondent's reliance on this Court's decision in *Amchen Prods. Inc.* v. *Windsor*, 521 U.S. 591 (1997), is wholly misplaced. *See* Br. at 19. Petitioners agree that resolution of state law class action issues was "logically antecedent" to resolution of their due process claim; indeed, they urged the state court to resolve this case in their favor on state law grounds. In *Amchen*, of course, this Court concluded that the case could not be maintained as a class action and thus did not need to address the constitutional question. 521 U.S. at 622. Here, the opposite is true.

haled into court at the behest of a private plaintiff who alleges no injury caused by that defendant. As petitioners have shown (Pet. at 11-16), and respondent nowhere disputes, the requirement that a private plaintiff allege injury at the hands of a private defendant is a fundamental and deeply rooted principle of Anglo-American jurisprudence that long predates adoption of the federal constitution and has, until recently, been consistently respected by state as well as federal courts. Because this "private injury" requirement is essential to the "'orderly administration of the laws,'" and gives our legal system the "degree of predictability" necessary to ensure "'fair play and substantial justice,'" *World-Wide Volkswagen Corp.*, 444 U.S. at 292, 297, the Due Process Clause requires state courts to adhere to this fundamental requirement.

To be sure, this same requirement is incorporated into Article III's "case" or "controversy" requirement, just as several other fundamental due process principles are incorporated into other express provisions of the Constitution. Cf. *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 266 (1994) (noting that the Takings, Contracts and Ex Post Facto Clauses all embody fundamental due process principles). But Article III encompasses a number of other limitations on the judicial power, derived from separation of powers principles and "founded in concern about the proper – and properly limited – role of the courts in a democratic society," *Warth* v. *Seldin*, 422 U.S. 490, 498 (1975). These include the requirements of injury in suits involving public defendants, *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), a threat of real and immediate injury in suits seeking injunctive relief, *City of Los Angeles* v. *Lyons*, 461 U.S. 95, 101-02 (1983), and a showing that the plaintiff will benefit from any relief sought. *Warth*, 422 U.S. at 508. Petitioners do not contend that any of these limitations are fundamental components of due process, and thus do not seek to subject state courts to the restrictions of Article III per se.

Given the more than 800-year pedigree of the "private injury" requirement, it is unsurprising that respondent identifies no case in which this Court has ever suggested, let alone ruled, that state courts may permit a private defendant to be haled into court at the behest of a private plaintiff who alleges no cognizable injury caused by that defendant. In the cases respondent cites, this Court noted that state courts can hear challenges to laws of general application, *ASARCO, Inc.* v. *Kadish*, 490 U.S. 605, 617 (1989), render advisory opinions on the constitutionality of state laws, *Pennell* v. *City of San Jose*, 485 U.S. 1, 8 (1988); *Secretary* v. *J.H. Munson Co.*, 467 U.S. 947, 971 (1984) (Stevens, J., concurring), entertain challenges to state laws brought by taxpayers, *Doremus* v. *Board of Education*, 342 U.S. 429, 433-34 (1952), and "use injunctions to oversee the conduct of law enforcement authorities" despite the lack of a real and immediate threat of future injury, *Lyons*, 461 U.S. at 113.[3] None of these cases involved claims brought by a private plaintiff against a private defendant who was not alleged to have caused the plaintiff any injury. Accordingly, there is no "well-settled (and well grounded) precedent" of this Court establishing that States may dispense with the fundamental requirement of an allegation of injury at the hands of a private defendant.

Nor does respondent rebut petitioners' showing that dispensing with this requirement is profoundly unfair. He asks the Court to ignore the plight of petitioner Webster Memorial Hospital on the grounds that its billing practices "are not representative." Br. at 4. But it is precisely because the state courts dispensed with the requirement of actual injury at the hands of a private defendant that respondent is

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[3] These cases involved well-recognized non-Article III types of state court adjudications (*see* Pet. at 14-15), all of which have historical antecedents that predate the federal constitution itself. *See* R. Berger, *Standing to Sue in Public Actions: Is it a Constitutional Requirement*, 78 Yale L.J. 816 (1969).

able to maintain suit against an entity whose practices are unlike those of the hospital with whom he actually dealt. Indeed, by allowing him to maintain suit against literally dozens of entities with whom he has never dealt, the state courts have afforded respondent enormous, and entirely improper, leverage that he can use to extract a settlement without ever alleging, let alone proving, injury at the hands of petitioners.

Respondent's contention that this unfairness does not implicate the due process concerns that led to this Court's adoption of the "minimum contacts" test, Br. at 14-15, is simply wrong. In *World-Wide Volkswagen Corp.*, this Court stressed that what is "critical to the due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." 444 U.S. at 297.[4] The Court noted, moreover, that predictable legal rules governing amenability to suit "allow[] potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Id.* Here, permitting plaintiff to sue Webster Memorial and all of the other petitioners with whom he has never dealt is unfair precisely because these petitioners could not reasonably have anticipated being sued by him, and they had no reason to structure their primary conduct in order to protect themselves against such a suit.

3. Respondent's reliance on the "juridical links" doctrine serves only to underscore the impropriety of the decision

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[4] In light of the Court's emphasis on due process and the requirements of "'fair play and substantial justice,'" 444 U.S. at 292, respondent's suggestion that the "minimum contacts" test involves "issues of federalism," not due process, Br. at 14, is baseless. Indeed, in *Insurance Corp. of Ireland* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982), the Court explained that jurisdictional restrictions based on state sovereign power "must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause." *Id.* at 702 n.10.

below. Respondent quotes at length from the lower court, which found that petitioners are juridically linked because of their "'unique duty,'" as "'licensed, certified, or registered health care providers in West Virginia,'" to "'furnish medical records,'" and because the statutory scheme "'gives rise to a cohesiveness, connective link, or interrelationship between the defendants and the claims asserted.'" Br. at 28. But these "findings" in no way demonstrate that it is fair or proper to dispense with the fundamental requirement that a private plaintiff allege harm at the hands of the private defendants he has sued. West Virginia's medical records statute gave petitioners no reason to anticipate being sued by persons with whom they have never dealt, nor any reason to structure their primary conduct in order to protect themselves against such suits. Indeed, the circumstances of petitioner Webster Memorial Hospital more than refute any suggestion that common regulation obviates the due process problems that arise when a private plaintiff is permitted to sue a private defendant with whom the plaintiff has never dealt. The lower courts' contrary conclusion conflicts with decisions of state and federal courts that have rejected just this argument. *Streich* v. *American Family Mut. Ins. Co.*, 399 N.W.2d 210, 216 (Minn. Ct. App. 1987); *Angel Music, Inc.* v. *ABC Sports, Inc.*, 112 F.R.D. 70, 72 (S.D.N.Y. 1986).

Nor does respondent's bald – and economically non-sensical – allegation of a conspiracy obviate the due process violation that maintenance of this suit entails. In fact, respondent admits that, after roughly a year of discovery, he has adduced no evidence of any conspiracy to fix prices, and instead relies on testimony concerning a "'general consensus'" to charge 75 cents per page. Br. at 25-26.[5] A

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[5] Respondent's statement that the financial services director for one petitioner "made it clear that the hospitals throughout the state have agreed to charge this maximum allowable rate," Br. at 25, is plainly false. This person stated that "[t]hat's sort of a common practice," but acknowledged that "I have not seen other hospitals' policies and

consensus is simply not a conspiracy, particularly where, as here, the alleged "conspirators" do not compete with one another in the provision of patient medical records, and thus have absolutely no reason to fix the prices they charge for those records. Indeed, it is because there is no competition that prices are regulated by the state statute.

4. Finally, there is no reason to defer plenary consideration of the important issue that this case raises. The West Virginia Supreme Court has become the second state supreme court to dispense with the "private injury" requirement and to permit a plaintiff to sue a private defendant with whom the plaintiff has never dealt. See *Weld* v. *Glaxo Wellcome Inc.*, 746 N.E.2d 522, 530-31 (Mass. 2001) (permitting plaintiff to sue, under "juridical links" doctrine, companies with whom he had never dealt). As petitioners have explained, class counsel have aggressively pursued similar actions against entire industries based on the same flawed theory of common regulation that the lower courts accepted in this case. Pet. at 22. The decision in this case and the reasoning in *Weld* provide a green light for future actions against private defendants unfairly haled into court by plaintiffs who can allege no injury at the hands of the defendants.

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procedures here in West Virginia." (McFadden Dep. at 93, in App. to Resp't, Danial J. Guida's Resp. to Hospital's Pet. for Writ of Prohibition.)

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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